

REMARKS

This application is amended in a manner to place it in condition for allowance at the time of the next Official Action.

Status of the Claims

Claims 1-7 and 9-15 are amended generally as to form.

Claim 16 is new and directed to a specific embodiment recited in claim 1.

Claims 1-16 remain in this application.

Claim 8 has been withdrawn for being directed to non-elected subject matter.

Claim Rejections-35 USC §112

Claims 1-7 and 9-15 were rejected under 35 U.S.C. §112, second paragraph, for being indefinite.

Claim 1 was rejected for reciting "tocotrienol and/or lycopene, preferably tocotrienol". Accordingly, claim 1 has been amended to clarify that the composition comprises at least one of tocotrienol and lycopene, and new claim 16 recites that the composition comprises tocotrienol.

Claim 5 was rejected for reciting "in which polycosanols are esterified..." Claim 5 is amended to refer back to polycosanol esters as recited in claim 1 and further define the esters.

Claim 6 was rejected for reciting "derive" instead of "derived", and claim 6 was amended accordingly.

Therefore, the claims are definite and withdrawal of the rejection is respectfully requested.

Claim Rejections-35 USC §103

Claims 1-7 and 9-15 were rejected under 35 U.S.C. §103(a) as being unpatentable over YOKOYAMA et al. U.S. Patent No. 6,419,962 ("YOKOYAMA"). This rejection is respectfully traversed for the reasons below.

YOKOYAMA was offered for teaching that grape oil, beeswax, palm oil, evening primrose oil, and carrot extract may be used in an external skin treatment.

The conclusion of the Official Action was that it would have been obvious to combine two or more ingredients each of which is taught by the prior art to be useful for the same purpose in order to form a third composition which is useful for the same purposes.

However, the prior art compositions are not pharmaceutical, dietetic or nutritional compositions as recited.

Indeed, the purpose of the prior art compositions is quite different than the pending claims. As acknowledged by the Official Action acknowledged that the prior art teaches a number of components, such as grape oil, beeswax, evening primrose oil, palm oil can all be in an external skin treatment.

The claimed compositions, however, are not for external treatment: dietetic and nutritional compositions are not, of course, external. The claimed compositions are administered orally to patients suffering from hyperlipidemia with carotid plaque. (See, e.g., the original specification on page 3, lines 13-23.) The purposes are not the same, the administration route is also different from that of YOKOYAMA.

Moreover, the essential teaching of YOKOYAMA is the use of plant cells obtained by enzymatic treatment of pluricellular plants, without destroying the plant cell walls (see column 2, lines 32-65). This teaching has nothing to do with the pathologies connected with plasma lipids. Most significantly, however, this teaching would teach away from using plant extracts or components which are found from plant cells and which could possibly be extracted from said cells after destruction of the cell wall.

Most significantly, YOKOYAMA fails to disclose, or even suggest, each and every component of the composition according to claim 1. Specifically, there is no teaching of at least one of tocotrienol and lycopene. Neither of these components is listed in the countless ingredients of external compositions. Indeed, while YOKOYAMA discloses a carrot extract, YOKOYAMA fails to disclose its content. Thus, the Official Action provides no finding of fact for tocotrienol and lycopene.

Therefore, YOKOYAMA fails to render obvious the claimed invention and withdrawal of the rejection is respectfully requested.

Conclusion

In view of the amendment to the claims and the foregoing remarks, this application is in condition for allowance at the time of the next Official Action. Allowance and passage to issue on that basis is respectfully requested.

Should there be any matters that need to be resolved in the present application, the Examiner is respectfully requested to contact the undersigned at the telephone number listed below.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

YOUNG & THOMPSON

/Robert A. Madsen/
Robert A. Madsen, Reg. No. 58,543
209 Madison Street, Suite 500
Alexandria, VA 22314
Telephone (703) 521-2297
Telefax (703) 685-0573
(703) 979-4709

RAM/jr